

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 803

CALIFORNIA, PETITIONER,

vs.

LYMAN E. BUZARD.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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[fol. 1]

**IN THE
JUSTICE COURT OF ATWATER JUDICIAL DISTRICT
COUNTY OF MERCED, CALIFORNIA**

No. 5522

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

LYMAN E. BUZARD, 924th Air Refueling Sqd.,
Castle AFB, California, Defendant.

CERTIFIED COPY OF THE DOCKET ENTRIES

[fol. 2]

.....Miles
5

Complaint of ANDERSON Charging violation of Section 4000 of the Motor Vehicle Act.

Committed at and in
Merced County, California, on the 26th day of Feb., 1960

State License No. Chauffeur's No. Operator's No.

DATE

PROCEEDINGS

Complaint filed charging Defendant with crime of violating Section of the Motor Vehicle Act. Cited to appear APRIL 27, 1960

- 4-11-60 Complaint filed
- 4-26-60 Call from Mr. Adams, acting Atty. for Defendant advising he would appear for defendant either 27th or 28th of April 1960.
- 4-28-60 Mr. Adams, acting Atty. for defendant appeared and entered a plea of NOT GUILTY for defendant, Court Trial set for 2:00 P.M. 5-20-60.

DATE

PROCEEDINGS

- 5-19-60 Call from District Attorney requesting above trial be re-set for 2:00 P.M. June 1, 1960, request granted by Court.
- 5-20-60 Letter from Mr. Goff, Atty. for defendant agreeing to new trial date, and waiving time for trial [fol. 3] on behalf of defendant.
- 5-31-60 Amended complaint filed by Stephen P. Galvin, District Attorney charging violation of section 4000 C.V.C.
- 6 -1-60 Defendant Lyman E. Buzard, with Atty. Mr. Goff appeared, and Dept. D.A. Mr. Hallford appeared for the People, Defendant was duly arraigned on Amended Complaint, Mr. Goff, Atty. for defendant filed DEMURRER TO ACCUSATORY PLEADING on behalf of defendant, arguments to Demurrer were heard by the Court, and the Demurrer after hearing arguments on same was *overruled* by the Court, the Demurrer was filed to cover both complaints on file in said matter, the defendant after ruling on demurrer by the Court entered a plea of NOT GUILTY to amended complaint and trial was set for July 6, 1960 at 2:00 P.M. trial by Court requested by Mr. Goff, both attorneys stipulated to oral ruling on Demurrer.
- 6- 1-60 This Court given copy of PETITION FOR WRIT OF PROHIBITION by Atty. for defendant, Mr. Goff. as filed with Co. Clerk 6-1-60, 4:26 PM.
- 6- 1-60 Defendant, Lyman E. Buzard, posted \$105.00 cash bail. (Trust Fund; Rec. 25729.) To appear July 6, 1960 at 2:00 P.M.

DATE

PROCEEDINGS

- 6-16-60 Received and filed copy of ALTERNATIVE
[fol. 4] WRIT OF PROHIBITION from Charles E. Goff, Atty. for Defendant as filed with the Superior Court.
- 9-28-60 Received and filed from Law Offices of C. Ray Robinson, Atty. Defendant NOTICE OF APPEAL as filed with Superior Court in and for the County of Merced.
- 7-23-62 Judge Elmer L. Libby orders def be contacted or his attorney, for action to be adjudicated as to bail in amt \$105.00 still in Trust fund—awaiting forfeiture of same or refund.
- 7-23-62 Contacted Law Offices of C. Ray Robinson re above action set for final dispo—Receptionist advises proper attorney would be notified and would contact Judge Libby.
- 7-31-62 Letter to John E. Whiting, Atty. and Def's representative advising action will be held on Friday, August 10, 1962 at 10:00 A.M. and request confirmation of same.
- 8- 1-62 Letter to Atty. Kaplan this date advising of case involving Buzard vs. Justice Court (Appellate Court)
- 8- 2-62 Letter from Atty. John Whiting this date advising that action has been re-set for Friday, August 17, 1962 as on first hearing date, tentatively set for August 10, 1962. Attorney Whiting will be out of town. Prior to letter, a note was sent to DA Stephen Galvin from Atty Whiting regarding above mentioned action.
- [fol. 5]
8-16-62 DA's office advises Court trial to be taken from calendar—to be re-set possibly within a week.

DATE

PROCEEDINGS

Court req letter advising same, which was refused by DA Galvin.

- 9- 4-62 Court contacted DA's office re re-setting of Court trial. Court to be notified no later than 9-5-62.
- 9-11-62 Court contacted Atty. John Whiting for setting of Court trial. Court was advised by atty. that no witnesses will be present for Court trial, and atty. will present a statement of facts for evidence. Court contacted atty.'s sec—Court trial set for Friday, October 5, 1962 at 10:00 A.M.
- 9-28-62 Letter to Mrs. Alyce T. Hogan, Sec for Chairman of Judicial Counsel advising that Judge Elmer L. Libby respectfully enters plea for disqualification re Court trial set for Fri/Oct 5, 1962 at 10:00 A.M. Plea is based on the formulating of opinion prior to court trial.
- 12-11-62 Received and filed copy of letter from District Attorney, Stephen P. Galvin to Law Offices of C. Ray Robinson, Attorney John Whiting, stating he would like to be notified as to the status of said case. Also noting that Mr. Whiting, to the best of Mr. Galvin's recollection, was to submit a brief in support of his legal contention.
- 12-27-62 Received and filed copy of letter from Stephen
[fol. 6] P. Galvin, District Attorney, to Judge Mahoney, Livingston, requesting matter be brought to a decision in the near future.
- 1- 8-63 The defendant, Lyman E. Buzard, is hereby found guilty of violation of section 4000 C.V.C.
- 1- 8-63 Sentence will be passed 1-14-63 at 1:00 P.M.

DATE

PROCEEDINGS

- 1- 8-63 Letter written to Attorney John Whiting notifying him of date and time of sentencing. Copy mailed to District Attorney, Pat Hallford.
- 1-14-63 Both parties appeared—the def. fined \$50.00—judgment suspended and def. placed on probation for 6 months. The terms as follows:

To obey all Motor Vehicle Laws during the term of probation—bail to be exonerated—def. released on own R.

Motion that execution stayed until appeal perfected in District Court of Appeals as to Constitutionality.

By: Judge Mahoney

- 1-14-63 Tr. Ck #441 in amount of \$105.00 refunded for cash bail posted.
- 1-22-63 NOTICE OF APPEAL received this date and filed—duly issued and executed from the Law Offices of C. Ray Robinson—By: John E. Whiting. Attorneys for Petitioner.
- 2-19-63 Received and filed NOTICE OF APPEAL from Atty. John E. Whiting, Given to Court by Judge [fol. 7] J. H. Mahoney, Copies mailed to: Pat Hallford, District Attorney and to Stanley Mosk, Attorney General.
- 6-27-63 Letter duly issued and executed by Atty John E. Whiting requesting that “Stipulation Regarding Filing Appeal Statement”—copy be filed with the other papers on appeal in this Court.
- 6-27-63 *Stipulation Regarding Filing Appeal Statement* filed this date.

DATE

PROCEEDINGS

- 7-12-63 Letter duly issued and executed by Atty Rowell of the C. Ray Robinson Law Firm/Merced, California, stating that they enclosed original *Statement of Appeal* and *Notice to Prepare Record on Appeal* together with original transcript. This letter filed.
- 7-12-63 Received and filed "Statement on Appeal" and forwarded this "Statement of Appeal" with the Reporter's Transcript (Original) to the Clerk of the Superior Court of Merced, California.
- 7-12-63 Received and filed "NOTICE TO PREPARE RECORD ON APPEAL."
- 7-12-63 Letter to the Clerk of the Superior Court of Merced, stating that acting Judge Mahoney had indicated that time had elapsed as far as APPEAL was concerned and this Court requested that they might contact the acting Judge Mahoney as to whether this appeal might be legal since the time had elapsed.

[fol. 8] I, Elmer L. Libby, Judge of the Atwater Justice Court, Atwater Judicial District, County of Merced, State of California, do hereby certify the foregoing to be a true and correct copy of the original docket entries in this Court against the above named defendant, Lyman E. Buzard.

(Seal)

Dated: August 29, 1963.

By: Elmer L. Libby, Judge, Atwater Justice Court,
County of Merced, State of California.

[fol. 9]

IN THE JUSTICE COURT OF ATWATER JUDICIAL DISTRICT

COUNTY OF MERCED, CALIFORNIA

No. 5522

[Title omitted]

COMPLAINT—CRIMINAL (GENERAL)—Filed April 11, 1960

State of California,
County of Merced, ss.

Personally appeared before me, this 11th day of April, 1960, D. E. Anderson of California Highway Patrol, who being first duly sworn, complains and accuses, Lyman E. Buzard, of a misdemeanor, to wit: Violation of the California Vehicle Code, committed as follows:

The said defendant on or about the 26th day of February, 1960, at and in the County of Merced, State of California, and on a certain public highway of the State of California, [fol. 10] to wit: Bellevue Rd. did, while operating a 1959 Oldsmobile bearing Alabama, 1960, license No. 3-24002, wilfully and unlawfully violate section 4000 CVC

(Vehicle not registered and appropriate fees not paid under CVC)

All of which is contrary to the form, force and effect of the Statute in such case made and provided, and against the peace and dignity of the people of the State of California.

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant . . . , and that he may be dealt with according to law.

Donald E. Anderson

Subscribed and sworn to before me this 11th day of April, 1960.

Quinn Young, Judge of Atwater Judicial District.

(Seal)

Attest: _____, Clerk.

[fol. 11]

IN THE JUSTICE COURT OF ATWATER JUDICIAL DISTRICT

COUNTY OF MERCED, CALIFORNIA

No. 5522

AMENDED CRIMINAL COMPLAINT—Filed May 31, 1960

Personally appeared before me this 31st day of May, 1960, Stephen P. Galvin, Merced County District Attorney, who being sworn, complains and accuses, upon information and belief, said Defendant of a misdemeanor, to wit: Failure to Register Motor Vehicle and pay appropriate fees in violation of Section 4000 of the Vehicle Code of the State of California, committed as follows; said Defendant on or about the 26th day of February, 1960, near Atwater, in the County of Merced, State of California, did wilfully and unlawfully drive a motor vehicle upon a highway without said vehicle being registered in the State of California, and without having paid the appropriate California fees, said vehicle bore valid Alabama license plates and was registered in defendant's name for said state. Defendant is a resident of the State of Washington and a member of the Armed Forces, regularly assigned to Castle Air Force Base, California. Defendant on or about [fol. 12] September 1, 1959, was regularly assigned and stationed by competent military orders from said Castle Air Force Base to the State of Alabama for temporary duty, and while in said State of Alabama purchased a motor vehicle bearing valid Alabama license plates, which said vehicle defendant returned to Castle Air Force Base, California, his permanent duty station, on or about January 1, 1960, and thereafter at all times herein mentioned operated said vehicle in California with the said Alabama license plates without registering said vehicle in the State of California.

Said Complainant therefore prays that a warrant may be issued for the arrest of the said Defendant and that he may be dealt with according to law.

Subscribed and sworn to before me this 31 day of May, 1960.

(Seal)

Stephen P. Galvin

Quinn Young, Judge of the Said Judicial District,
County of Merced.

[fol. 13]

IN THE JUSTICE COURT OF ATWATER JUDICIAL DISTRICT

COUNTY OF MERCED, CALIFORNIA

No. 5522

No. 1232-D

DEMURRER TO ACCUSATORY PLEADING—Filed June 1, 1960

To the Honorable Quinn Young, Judge of the above entitled Court, and to the Honorable Stephen P. Galvin, District Attorney of the County of Merced, State of California.

Lyman E. Buzard, defendant in the above entitled action, demurs to the accusatory pleading on file herein on the following grounds:

1. That the facts stated do not constitute a public offense;
2. That it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution;
3. This court is without jurisdiction to proceed in this matter.

Dated: May 31, 1960.

[fol. 14]

Law Offices of C. Ray Robinson, By C. Ray Robinson, Attorneys for Defendant.

Points and Authorities: California Penal Code #1004 (4) and (5).

[fol. 15]

IN THE JUSTICE COURT OF ATWATER JUDICIAL DISTRICT
COUNTY OF MERCED, CALIFORNIA
Before Honorable John H. Mahoney, Judge Pro tem.
Violation of Section 4000 of the California
Vehicle Code

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

VS.

LYMAN BUZZARD, Defendant.

Transcript of Hearing—October 5, 1962

APPEARANCES:

Stephen Galvin, District Attorney of the County of Merced, appeared on behalf of the People.

The Law Offices of C. Ray Robinson by John Whiting, Esq., Robinson-Montgomery Building, Merced, California, appeared on behalf of the defendant.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Gentlemen, there seems to have been a mix up. I was informed by the Judicial Counsel to be here at 3:00 o'clock. I told them I would get down after a Preliminary that I had scheduled at 2:00 o'clock, if they so decided, and they said yes, and I had everything on my calendar for 3:00 o'clock this afternoon.

Mr. Galvin: Well, we won't hold you in contempt, your Honor.

The Court: I don't know whether I should pick that up and hold somebody else in contempt.

[fol. 16] Mr. Whiting: Do you have any witnesses?

Mr. Galvin: No, I called Mr. Cotton and he said as far as he knew, what you said was right. He didn't remember the details. He didn't remember who was over there, but he said the man had been in and had been registered and that there was a question about the \$118.00 or something license fee, and then it went on and he didn't know what happened after that. So pretty nearly anything that you would have to say regarding that is—

Mr. Whiting: I think what we will have to do in the case—are you familiar with the facts in the case?

The Court: I have just been handed the file. I am absolutely at a loss.

Mr. Whiting: The defendant was charged with violation of section 4000 of the Vehicle Code. Well,—

The Court: Registration, in other words?

Mr. Whiting: Yes, failing to register a 1959 Oldsmobile which he was, on the date of the citation, which was—

Mr. Galvin: Failure to register in California.

Mr. Whiting: We will, your Honor, waive at this time, any further reading of the complaint. The defendant has pled not guilty to a violation of this section. We will stipulate at this time that at the time the defendant was placed under arrest, or the time that he received the citation, that he was driving a vehicle which was not—

Mr. Galvin: Why don't we stipulate to the facts in the [fol. 17] Amended Complaint are true and then proceed.

Mr. Whiting: Yes, we can stipulate that the facts stated in the complaint are true, your Honor.

Mr. Galvin: That is the Amended Complaint.

Mr. Whiting: The Amended Complaint.

The Court: Issued a citation first, I presume?

Mr. Whiting: Yes.

Mr. Galvin: Pled not guilty and then we filed a complaint in the general, loose-type of complaint, and then finally we prepared a detailed complaint, setting out all the particulars covering this incident, and that is the Amended Complaint that is referred to.

Mr. Galvin: I would think that having the Amended Complaint and stipulating to the additional facts—

Mr. Whiting: Well, why don't we do this? You rest on this stipulation of fact and then we will put the defendant on the witness stand and take the rest of the facts from there?

Mr. Galvin: Perfectly proper, yes.

Mr. Whiting: O.K. Then, your Honor, at this stage of the proceedings, it is my understanding that Mr. Galvin has established his prima facie case, based upon our stipulation as to the truth of the facts contained in the Amended Criminal Complaint and at this time, we will call the defendant, Mr. Buzzard to the witness stand.

[fol. 18] LYMAN BUZZARD, defendant, examined as a witness on his own behalf, being duly sworn by the Court, testified as follows for

Direct examination.

By Mr. Whiting:

Q. Your name is Lyman Buzzard?

A. That is true.

Q. And Mr. Buzzard, your occupation is a Captain in the United States Air Force, is that correct?

A. That is right.

Q. And you reside here in the City of Atwater at Atwater, or at Castle Gardens, is that correct?

A. That is correct.

Q. Subject to the consent of Counsel, I am going to lead the witness in order to save time here?

Mr. Galvin: Sure.

By Mr. Whiting:

Q. Mr. Buzzard, it is true, is it not, that you have been a resident of the State of Washington since your birth, is that correct?

A. That is true.

Q. What city in Washington do you reside in now?

A. At the present time it is Langley, Washington.

Q. And where were you born in the State of Washington?

A. Seattle.

Q. Were you married in Washington?

A. No, I was married in Youngstown, Ohio.

[fol. 19] Q. And you vote in the State of Washington?

A. That is correct.

Q. And you voted at the last general election in the State of Washington?

A. Yes, by absentee ballot.

Q. Now you entered the U. S. Air Force in August of 1951, did you not?

A. Yes, that is right. Pardon me, it was June of 1951.

Q. June of 1951?

A. Yes.

Q. Now after your entering the Air Force—incidentally which State did you either enlist or were you brought into the Air Force?

A. I enlisted in Seattle, Washington.

Q. And after your entry into the Air Force, you were stationed in Lackland Air Force Base at San Antonio, Texas?

A. That is correct.

Q. That was during the year of 1951, was it?

A. Yes.

Q. And that same year also, you were stationed at Sheppard Air Force Base, Wichita Falls, Texas?

A. Yes.

Q. And at Lowery Air Force Base in Denver, Colorado? You went in 1952, is that correct? In the early part of 1952?

A. No, I was sent to Lowery, it was in the fall of '51.

[fol. 20] Q. That is correct. In September of 1951?

A. Yes.

Q. And then in February of 1952 you were transferred to Good Fellow Air Force Base at San Angelo, Texas?

A. That is correct.

Q. And that September, or that March of 1952 you went to Spence Air Base at Moultrie, Georgia?

A. That is correct.

Q. And following that, in September of 1952 you went to Enid, Oklahoma to Vance Air Force Base, is that correct?

A. That is correct.

Q. And then from there, in the early part of 1953 you were transferred to Randolph Air Force Base in San Antonio, Texas?

A. Yes.

Q. And then down to West Palm Beach Air Force Base at West Palm Beach, Florida in May of 1953?

A. Yes, correct.

Q. And then to Louisiana, Lake Charles Air Force Base at Lake Charles?

A. Yes.

Q. And that was in September of 1953, is that true?

A. Yes.

Q. And then you were placed on inactive duty, anyway, is that correct, in 1956?

A. That is correct.

[fol. 21] Q. And where did you return to live?

A. In Seattle, Washington.

Q. In other words, after you went on inactive duty, you returned to your home in Seattle?

A. Yes.

Q. And at that time were you married?

A. No, when I was released from active duty I was not.

Q. And you stayed in Seattle for how long?

A. Other than the period to go back to Youngstown to be married in September of '56, I was in Seattle from March of '56 to June of '57 when I was recalled.

Q. And you were married when?

A. In September of '56.

Q. Now after your marriage in September of '56, did you go back to Seattle?

A. Yes.

Q. And you and your wife resided in Seattle?

A. Yes.

Q. And then you were recalled into the service in what year?

A. June of 1957.

Q. And where were you sent?

A. Castle Air Force Base.

Q. And you have been permanently assigned to Castle Air Force Base ever since that time?

A. That is correct.

[fol. 22] Q. Now calling your attention to September 3rd of 1959, were you assigned to a school in Alabama?

A. That is true, Maxwell Air Force Base.

Q. And you received that assignment pursuant to regular orders from the Military, did you?

A. That is correct.

Q. And what was your purpose in going to that school?

A. To go to the Squadron Officers School which is located at Maxwell Air Force Base.

Q. And these were written orders that you received from the Military, is that correct?

A. That is correct.

Q. Now how long were you stationed at that school, at Maxwell Air Force Base?

A. From—I believe I arrived there on the day before Labor Day. I don't remember the date, but 1959. I arrived in Montgomery and I departed on the 19th of December of '59.

Q. Now when you went down there, did you know that you were coming back to Castle Air Force Base?

A. Yes, sir, yes, sir.

Q. I see. And this is—your stay in Montgomery, Alabama at Maxwell Air Force Base and going to school down there would this be what the Military would classify as temporary duty?

A. That is correct.

Q. TDY?

[fol. 23] A. Yes.

Q. What does that stand for?

A. Temporary duty.

Q. What does the "Y" stand for?

A. They take the "Y" out of duty.

Q. And did you take your wife down there with you?

A. Yes, sir.

Q. Now while you were in Montgomery, you purchased a vehicle, did you not?

A. That is correct.

Q. And what kind of car was that?

A. It was a 1959 Oldsmobile.

Q. An Oldsmobile 98.

A. That is correct.

Q. Now at the time that you purchased that car, did you comply to your knowledge with all registration laws of the State of Alabama?

A. Yes, sir, yes, sir.

Q. And you received documents in connection with that car, did you?

A. Yes.

Q. You received a conditional sales contract?

A. Yes.

Q. Did you buy it from a private person or did you buy it from—

A. From a dealer.

[fol. 24] Q. From a dealer?

A. Yes.

Q. In Montgomery, Alabama?

A. Yes, Capitol Motor Company.

Q. And at the time that you bought that car, did it have license plates on it?

A. Yes, sir, it had 1960 Alabama license plates.

Q. And those license plates, is it your understanding that they are issued in September of the previous year?

A. Yes, I believe their expiration date is the last day of September, with a 30 day grace period which would extend to October.

Q. Was that a new car?

A. It was the Oldsmobile of the President of the company there. It was his personal car. It was a used—

Q. Demonstrator?

A. It was a demonstrator, yes.

Q. Now after you left—then you left Alabama on or about the 1st of January, 1960, is that correct?

A. I departed there on the 19th of December and took a leave to go to Youngstown to visit my wife's parents during Christmas time, and we returned from Youngstown back to California.

Q. And you came back here to Castle Air Force Base, is that correct?

A. Yes.

[fol. 25] Q. And to your apartment here at Castle Gardens?

A. Yes, that is correct. We arrived back here, it was late in the afternoon of the 31st. It was New Year's Eve.

Q. 31st of—

A. December.

Q. Of December. All right. And then after you came back here, did you drive this car with these Alabama license plates here in California?

A. Yes.

Q. Now at any time from the date—after you arrived here on the 31st of 1959 up until the time you were stopped by a Highway Patrolman, had you taken that car to the State of Washington?

A. No, sir.

Q. You had not been to the State of Washington at all, is that correct?

A. No, sir.

The Court: I have the Amended Complaint is all.

Mr. Whiting: Here it is. I have it. Now calling your attention to the day of Friday, the 26th of February of 1960, at approximately 4:00 o'clock in the afternoon. Were you stopped by a highway patrolman?

A. Yes, sir, there was a—well, yes, sir.

Q. Where did that occur?

A. That occurred on Bellevue Road just outside of Castle Gardens. There was a road block there, set up by the State [fol. 26] Patrol.

Q. Now at that time did the officer explain to you why he had stopped you?

A. No, sir.

Q. He did not give you any citation at that time?

A. No.

Q. Did he tell you—did he ask you any questions about your license plates?

A. I can't exactly remember. He asked to see my driver's license and I showed him the California driver's license which I had obtained, oh, quite a time prior to that. Before I even went to Alabama, and I can't remember now whether there was any question. I know—I asked him the question, "What is the reason for my being stopped", and he said, "We were just"—I believe he said something to the effect, "We were just checking out of state license plates", but there was no reference to what the question might be or the problem might be.

Q. Now I am glad you mentioned the driver's license. You had a California driver's license?

A. Yes.

Q. Valid California driver's license?

A. Yes.

Q. And you also had an Alabama?

A. Yes, and a Washington State driver's license.

Q. You got the Alabama license while in Alabama?

[fol. 27] A. Yes.

Q. And am I correct that that State, even though you are on military duty there, if you are going to be driving there for any period of time, requires you to have a license?

A. I believe there is a similar Alabama law to the one that they have in California. However, the main reason that I obtained the Alabama driver's license was to have a driver's license to match the automobile plates, because some states I have run into trouble with having a driver's license from one state and plates from another, and you get in hot water if you happen to get stopped.

Q. It makes it inconvenient for you?

A. Yes.

Q. After you were stopped by this highway patrolman, were you called into an office at Castle Air Force Base?

A. No, sir.

Q. Well, when you were stopped, am I correct that you did not receive any citation?

A. No, sir, that citation didn't arrive until your office pressed the subject I believe it was almost a month or two later, or six weeks.

Q. Now did you have occasion to go to the Department of Motor Vehicles after that officer stopped you?

A. Yes.

Q. And how did you happen to go to the Department of Motor Vehicles?

[fol. 28] A. I received a call from the Provost Marshal, I don't remember his name at the time. He is not on the Base now. And he informed me that the State Patrol had submitted a list of names of people who were stopped in the road block to the Base, asking that the Base trace the home of record or residence of the various individuals to find out whether they were actually driving a car with plates of their home state or not, and he said, "We have information that you are a resident of Washington, and we have to submit the car to the State Patrol and I suggest that you get down there and register the car." I explained to him that the Vehicle Code that I had, the summary stated that I was—since I had been on duty in Alabama, that I had Alabama plates and the book said that I could keep those plates until the time that they expired unless I got my home state plates sooner, which I intended to get that summer, and he said, "Well, just to save any trouble", he said, "You better go down there to the Motor Vehicle Registration in Merced and check on it."

Q. Now this book you had read, was this book (indicating)?

A. Yes.

Q. Now you are familiar with this?

Mr. Galvin: Yes.

By Mr. Whiting:

Q. And the section you refer to was on page 68, Military Exemption. It says: "Members of the Armed Forces who own vehicles are permitted to drive them in California while displaying the license plates last issued to them by their [fol. 29] home state or by any state, territory, or country in which they were assigned for military duty. If the vehicle is of the commercial type, immediately consult the Department of Motor Vehicles about registration requirement." Note: ("This rule applies to both residents and non-residents in the forces.")

Now this is a book entitled "California Vehicle Code" summary which states on the front page that it was compiled and issued by the Department of Motor Vehicles, Robert McCarthy, Director, December of 1959.

A. That is correct.

Q. And this is the book that you referred to, and the section that I read was the section that you referred to when you had the conversation with the Provost Marshal?

A. Yes.

Q. Now incidentally, we will put this book in evidence as Defendant's first in order.

Mr. Galvin: No objection.

By Mr. Whiting:

Q. Now did you go to the Department of Motor Vehicles?

A. Yes, sir. I don't remember exactly the date that I went down there. It was within a week or ten days, if I remember right, of the time that the Provost Marshal called me. I should say a week or ten days from the time that I was stopped.

Q. All right.

[fol. 30] A. And I went down there and asked Mr. Cotton, who happened to be the man on duty, what the story was on this incident.

Q. Well, let me interrupt you there. Did you go down there for the purpose of registering your car?

A. Yes, sir.

Q. All right.

A. And Mr. Cotton said I would have to register the car, and I asked him about the summary code, and he said, "Well, that doesn't apply." He said, "Because you were on TDY" and he said, "Let me take the motor number et cetera" and he went out and took the motor number and filled out the necessary forms to register the car and he asked—he just said, "This will be a hundred and some odd dollars." I forget what it was.

Q. In other words, he asked you—I want this point. He made a demand upon you for a hundred—in excess of a hundred dollars, is that correct?

A. Yes.

Q. And the purpose of that, it was your understanding was a license fee for the registration of the car?

A. Yes, he had the fees and final figure up.

Q. Am I correct that you refused to pay at that time?

A. No, I didn't refuse to pay it. He said, "Do you want to pay it now", and I said, "I don't have the money in cash with me, will you accept a check" and he said, "No," [fol. 31] and it was late in the afternoon as I remember, and I said, "Well, I will come back tomorrow or the next day," and that was the last time that I had any dealings with Mr. Cotton down there because—you want me to continue?

Q. Yes.

A. Because when I came back out on the Base, I was disturbed about this vehicular code book and I asked him if I could see why the book—he had said that this book was not correct and he said, "Well, I don't have to show that to you," and so I started researching this and got some later books which said the same thing, and went out to the Base Provost Marshal's office to get their copy of the master code book, and I saw there in parentheses, it says "Except TDY and on leave", and I questioned the Base Legal Officer about it and it looked like I was going to have to register my car all right at that time. This was about two days after I had been down to the office. And Colonel Dysinger, the Base Commander had heard of this road block and the

problem I was having, through the Base Legal Office, and became a little disturbed about it and suggested before I take any further action, I go down and see C. Ray Robinson.

Q. Now first let's get to these things in evidence, I show you a document entitled California Highway Patrol Notice to Appear, and ask you if this is the citation that you received in the mail approximately a month or so after you were stopped?

[fol. 32] A. Yes, sir.

Q. And we will offer that.

Mr. Galvin: Tell me what the day is?

Mr. Whiting: Oh, on the citation it is written on the 25th of March, 1960. I assume that you received it a few days after the 25th of March, 1960?

A. Yes.

The Court: May I ask a question, clarifying the usual thing. Then you received a letter with this?

A. No, sir, I—yes, I did. Yes, I did.

The Court: You would, because the complaint would have been filed.

A. I believe I was issued a letter to appear in the Justice Court here in Atwater.

Mr. Whiting: Maybe we can pin the date down a little more.

A. It was rather late. I think that they had written the thing, but had not sent it on until C. Ray's office had pressed the thing, because I received all kinds of threats from the State Patrol that I was going to be arrested and my car was going to be impounded.

By Mr. Whiting:

Q. Would you tell me, is this the envelope in which you received the citation?

A. Yes, sir, it was from this Atwater Court. I have not received any other correspondence.

Q. For the record this is an envelope alleging sent out—
[fol. 33] The Court: I think I might be able to clarify that, too. When the patrol made up the complaint and mailed it to the court with this copy, with the original citation or court copy of the citation, then the court would notify the defendant in the matter.

Mr. Whiting: Right. In other words, I will introduce this letter, the envelope with a postmark of April 11, 1960, showing also a postmark or mark or notation on it of May 12th of 1960, and also incorrect address notation on the envelope. In the upper left hand corner of the envelope is "Judge Quinn Young, Atwater Judicial District Court."

A. Yes, they sent it to the Base for me and I don't have a box, and they sent it back.

The Court: You want this as Exhibit two?

Mr. Whiting: Yes.

By Mr. Whiting:

Q. Now thereafter did you appear in this matter and post bail?

A. Yes, sir.

Q. All right. And of course had pled not guilty to violation of section 4000 of the Vehicle Code?

A. Yes.

Q. I show you one other—well, we will get this in. I don't know—I wonder, Mr. Buzzard, if you have ever seen this document?

A. Yes, sir, that was issued at, I believe it was around [fol. 34] Christmas. It was during a holiday.

Q. Was this—

A. Out here on the Base.

Q. Before you were arrested?

A. Oh, no, sir. This was after.

Q. Subsequent. When you mentioned that you had looked for and you were doing some research out there and saw there was information subsequent which was consistent

with what you read in the Department of Motor Vehicles handbook, is this what you had reference to?

A. No, this had nothing to do with that. I happened to pick this up. They had a mandatory safety meeting at the Base here. It was the State Patrol passed out this information and I happened to cast my eye on it. I didn't recognize it for a minute and told Chuck Goff about it down there in C. Ray's office, and he asked that I bring it down to him.

Mr. Whiting: Can we stipulate that this goes in as defendant's next in order, which is a bulletin purportedly put out by the California Highway Patrol, concerning license requirements and regulations? Now was there any time that the Department of Motor Vehicles or Mr. Cotton offered to register your car without the necessity of your paying the \$100.00—in excess of \$100.00?

A. No, sir.

Q. And was it your understanding that the \$100.00, or the \$100.00 plus was a license fee?

[fol. 35] A. And a fine, both.

Q. And a fine, both?

A. Yes, penalties.

Q. Penalties?

A. Yes, that is right, I am sorry.

Q. And you of course refused to pay that and have refused to pay that since the time?

A. The original time I didn't refuse, I didn't have the money with me.

Q. But subsequent?

A. Yes, I have refused.

Cross examination.

By Mr. Galvin:

Q. Do you recall what the regular license fee was for the car that Cotton asked?

A. I can't say for sure, sir. Being that the car was still pretty new and the price I believe was somewhere in the vicinity of \$80.00.

Q. And the difference between that was based on penalties due to not having registered the car within a time?

A. Yes.

Q. Within 30 days after bringing it in the State. I see.

A. Yes, sir.

Q. You have in evidence a record of some type, your Exhibit "1" and "3", or at least "1". Did you have that [fol. 36] information—when did you first get the information that you did not have to register a vehicle that you had obtained in another state where you were on duty?

A. I had the booklet with me when I went to Alabama. I carried it in my previous car. I obtained the booklet when I obtained the driver's license in California, and I kept it in the car, and this came to my attention while I was in Alabama, over the license plates. Since the car has the '60 plates on, when I got back here I thought I had better look into it because I am liable to be stuck in California with that registration problem, and I glanced through the book and I felt, if there is no harm, I would wait until I went home on leave in the summer and get my Washington plates.

Q. Had you had a car prior to going to Alabama?

A. Yes.

Q. And did you drive to Alabama?

A. Yes.

Q. And in what State was that automobile registered?

A. Washington.

Q. Do you still have the Oldsmobile?

A. Yes.

Q. And what is its registration now?

A. Washington State.

Q. Oh, you have since registered in Washington. So that you went down to the Department of Motor Vehicles and saw Mr. Cotton at the suggestion of the authorities at [fol. 37] the Base?

A. Yes, sir.

Q. I see. And then you discussed registration and he explained in substance, or licensing, that it was going to cost you a certain fee and a certain penalty?

A. Well, a little more in explanation. He had filled out the numbers and taken the forms and got the motor number. He is not one to give much information, without being very official.

Q. And then you didn't—you had received the citation before going to see Cotton?

A. No, sir.

Q. You had received notice from the Base?

A. That is right, yes, sir.

Q. And it was after that you went to see Mr. Cotton and he told you what the fees and penalties would be, and you did not pay them and you received the citation, is that correct?

A. It was quite a while after that, yes.

Q. Well—

A. Yes, sir, it was after that particular time.

Q. That book that is People's Exhibit—Defendant's Exhibit "1", where did you get that, do you recall that?

A. I got it at the Merced Motor Vehicle office. This one that I have here is not the original one that I had. This was the latest one I could obtain at that time to show the basic paragraph had not changed. And I don't think it [fol. 38] has changed to this date.

Q. Did you run it out on the Alabama plates?

A. No, sir. You mean until they expired?

Q. Yes.

A. No.

Q. You registered it in—

A. Yes, I was—I went home that summer and registered the car in the State of Washington.

Mr. Galvin: I have nothing further.

By Mr. Whiting:

Q. After you get out of the service, is it your intention to return to the State of Washington?

A. Yes.

Mr. Whiting: That is all. The defense will rest, your Honor.

Mr. Galvin: We have nothing further, obviously.

STATEMENT BY COUNSEL FOR DEFENDANT

Mr. Whiting: So that the record is clear, we do want to make it clear that our position in this case, your Honor, is that the section 4000 as it was being applied by the Department of Motor Vehicles in seeking to extract a license fee from this defendant, and obviously was being applied at the time of the arrest was unconstitutional, violating various provisions of the Federal Constitution. The fact that the Federal Legislature had enacted laws which provided that a person in the military, while a resident of one state could not be—can not be taxed for a license fee in the state where he is assigned. The fact that he does not—he can not be [fol. 39] forced to become a resident of this state in which he is assigned, referring specifically to United States Code Annotated, Title 50, Section 574, that we take the position at this time in our arguing, your Honor, that perhaps the State of California had a right to require this defendant to register the vehicle here for the purpose of having a record of the ownership of the vehicle, but had no right to extract funds under the circumstances as it were, for the license fees or the penalties because of the fact that that would have been an attack on the defendant which would be in violation of the United States Constitution in violation of this section that I have referred to in the United States Code Annotated.

We also take the position that the time to apply this section—incidentally, in conjunction with other sections in the vehicle code, in the Taxation and Revenue Code, specifically sections 10751 et seq. of the Revenue and Taxation Code which is the code section that provides for a license fee, as well as section 6701 of the Vehicle Code which provides for an exemption from a license fee for certain persons in the military who are residents of other states except

when they purchase a car in another state under competent military orders, except where the military orders apply to temporary duty. We take the position that these sections are unconstitutional because of the fact that there is certainly discrimination between this defendant in this particular case as distinguished from a case where had he [fol. 40] gone to the State of Washington and registered it in that state, then he would not have been arrested, whereas in the case here he was, and we take the position that there is not a good political reason for distinguishing, and for this classification as between the case that I have cited in the defendant's case.

Therefore, to make our position clear, we say that to apply—that this arrest was unconstitutional because of the fact that under the United States Constitution, speaking through this section in the United States Code Annotated, and the war power clause of the United States Constitution, the supremacy of the United States laws and the equal protection of the United States Constitutional laws, this defendant did not have to pay and should not have to pay the license fee which the Department of Motor Vehicles was requiring prior to his being able to register his car to meet the provisions of section 4000. Now I think I have made myself clear enough for the record so that the Constitutional question can be raised on either side.

STATEMENT BY COUNSEL FOR PLAINTIFF

Mr. Galvin: I would just want to call the court's attention to our position, and also to the history of this particular case. This same issue has been—this same issue with modifications, has been ruled on this particular question by the State Appellate Court. I think of course, your Honor, will probably want a brief or something on this later, but just to tell you what has happened, because I know that you are not familiar with it, or at least you indicated that you are not.

The Court: No, I don't know the background of the case at all.

Mr. Galvin: Initially we filed this Amended Complaint, the facts of which have been stipulated to, which the defendant demurred, raising pretty substantially the same points, and then the demurrer was overruled and we were to proceed, and the defendant then sought in the Supreme Court a Writ of Prohibition to prevent the court from proceeding on substantially the same grounds. We demurred to the petition for the Writ of Prohibition, which demurrer was sustained by the court, in effect saying "Yes, let the Justice Court proceed", and the defendant appealed to the Appellate Court.

The Court: You are talking about the District Court of Appeals?

Mr. Galvin: Yes, the District Court of Appeals in effect sustains the Superior Court which had said go ahead with the trial but in that opinion, and I am sure it will be made available of course, they said—well, whether—there is no showing that this man ever did make an effort to register the vehicle. They didn't say that if he showed he had made an effort to register the vehicle that they would reach a different decision, although, when your Honor reached the opinion, there is certainly an indication along that line. So that is why it is back, and this is why particularly the additional evidence that Counsel has introduced in here [fol. 42] today. Now it is our position that if that opinion had said, "With that additional evidence then the case is out", we would—there would not be any problem. I feel that the points that Counsel is raising regarding the constitutionality of the provision and the precedence of the Federal section he cites, I don't feel that—they were argued and presented to the Appellate Court and the Appellate Court did not reach the same conclusion that Counsel is reaching but there is this additional element. The point is that so far as section 6701 of the Vehicle Code is concerned, it specifically eliminates a person from nonregistration, a person that had gone on and picked up a car on temporary duty—and this defendant was on temporary duty. If he was on permanent duty, I agree, he doesn't have to register the car, but the code provision eliminates him from the

privilege of nonregistration, and that is what Counsel indicates is unconstitutional, and the classification of being in another state on temporary duty and in another state on permanent duty is—there is nothing realistic in it, and so that is briefly what our position is, that this is the same case that—or the same principles apply as did on the other.

The Court: Well, I will ask you to brief it, Counsel, so I can get the authorities down and check them out myself.

[fol. 43] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 44] [File endorsement omitted]

IN THE JUSTICE COURT OF ATWATER JUDICIAL DISTRICT
COUNTY OF MERCED, CALIFORNIA

No. 5522

No. 28647

LYMAN E. BUZARD, Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, Respondent.

NOTICE OF APPEAL—Filed January 22, 1963

To the Honorable Pat Hallford, District Attorney for the County of Merced, State of California, and to the Honorable Stanley Mosk, Attorney General of the State of California.

Please Take Notice that the Petitioner Lyman E. Buzard, hereby appeals to the Superior Court of the State of California in and for the County of Merced from the Judgment of Conviction entered on the above entitled matter on January 14, 1963.

Dated: January 21, 1963.

Law Offices of C. Ray Robinson, By John E. Whiting, Attorney(s) for Petitioner.

[fol. 45]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

No. 5522

No. 28647

LYMAN E. BUZARD, Petitioner,

vs.

THE JUSTICE COURT OF THE ATWATER JUDICIAL DISTRICT,
COUNTY OF MERCED, STATE OF CALIFORNIA, AND THE HON-
ORABLE QUINN YOUNG, JUDGE OF THE SAID COURT, Respon-
dents,

THE PEOPLE OF THE STATE OF CALIFORNIA and THE HONOR-
ABLE STEPHEN P. GALVIN, DISTRICT ATTORNEY FOR THE
COUNTY OF MERCED, CALIFORNIA, Real Parties in Interest.

NOTICE OF APPEAL—September 27, 1960

To the Clerk of the Above Court, and to the Justice Court of the Atwater Judicial District, County of Merced, State of California, and The Honorable Quinn Young, Judge of the Said Court, and to The People of the State of California and The Honorable Stephen P. Galvin, District Attorney for the County of Merced, California, and to The [fol. 46] Honorable Stanley Mosk, Attorney General of the State of California:

Please Take Notice that the petitioner, Lyman E. Buzard, hereby appeals to the District Court of Appeal of the State of California, Third Appellate District, from the judgment entered in this action against said petitioner and in favor of the respondents and the real parties in interest.

Dated: September 27, 1960.

Law Offices of C. Ray Robinson, By C. Ray Robinson, Attorneys for Petitioner.

[fol. 47]

[File endorsement omitted]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

No. 5522

No. 28647

STIPULATION REGARDING FILING APPEAL
STATEMENT—June 25, 1963

It being in the interest of justice and in the interests of both parties hereto, it is stipulated and agreed that defendant herein may file a proposed statement on appeal, and file the trial court transcript herein as stating the oral evidence to be considered herein, within thirty days from the date hereof, and that such statement may be deemed and considered to be filed within the time specified and in accordance with the Rules on Appeal applicable to the appeal herein.

Dated: June 25, 1963.

[fol. 48] Pat Hallford, District Attorney.

Law Offices of C. Ray Robinson, By John E. Whiting, Attorneys for Defendant.

So Ordered:

Donald R. Fretz, Judge of the Superior Court.

[fol. 49]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

No. 5522

No. 28647

STATEMENT ON APPEAL—July 11, 1963

Defendant hereby files his statement on appeal herein, as follows:

A. Appellant hereby gives notice that he intends to file, files herewith, and makes the same a part of this statement, reporter's transcript of the evidence and proceedings herein at the trial hereof on October 5, 1962.

B. As grounds for appeal, defendant states: The judgment of conviction herein was and is erroneous and an unconstitutional application and enforcement of the provisions of the Revenue and Taxation Code, Sections 10751, et seq., and Vehicle Code, Section 4000 and Sections 6700, et seq., and that such provisions, as applied here, are unconstitutional, and that defendant herein has been denied equal protection of law. Defendant states as further [fol. 50] grounds that the Court's action here, and the statutes applied, are in contravention of the Soldiers' and Sailors' Relief Act, and that the California statute, in its use of the phrase "temporary duty", is vague and ambiguous and therefore unenforceable.

Dated: July 11, 1963.

Law Offices of C. Ray Robinson, By Jonathan H.
Rowell, Attorneys for Defendant.

[fol. 51]

[File endorsement omitted]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCER

No. 5522

DOCUMENTS ON APPEAL FORWARDED HEREWITH—

Filed August 30, 1963

To: The Clerk of the Superior Court, County of Merced,
State of California

Forwarded herewith is record on Appeal pursuant to
requirements of Rule #183 of Rules on Appeal in the Jus-
tice Courts on Criminal Cases.

The following documents are included:

1. The complaint and citation #G649251
 2. The Amended Complaint
 3. Demurrer to Accusatory Pleading
 4. Notice of Appeal
 5. Official Receipt #25729 and copy of letter to John C.
Whiting, Attorney
 6. Notice of Appeal
 7. Stipulation Regarding Filing Appeal Statement.
 8. Certified Copy of the Docket Entry 1232-D
- [fol. 52] 9. Exhibits 1, 2 and 3.

I, Elmer L. Libby, Certify that the above listed docu-
ments constitutes the records on file in the office of the
Atwater Justice Court, State of California.

By: Elmer L. Libby, Judge, Atwater Justice Court,
Atwater Judicial District, County of Merced, State
of California.

[fol. 53]

IN THE SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF MERCER
No. 5522

THE PEOPLE OF THE STATE OF CALIFORNIA,

VS.

LYMAN E. BUZARD, Defendant.

Present: Hon. Gregory P. Maushart, Judge.

ORDER CONTINUING HEARING—September 3, 1963

At the request of counsel for defendant, the Court continues the above hearing to Tuesday, September 10, 1963 at 9:30 A.M.

[fol. 54]

IN THE SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF MERCER
No. 5522

Present: Hon. Gregory P. Maushart, Judge.

ORDER TRANSFERRING CASE—September 10, 1963

After reviewing record, the Court orders case transferred to the District Court of Appeal.

[fol. 55]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCER

No. 5522

[Title omitted]

Present: Hon. Gregory P. Maushart, Judge.

ORDER VACATING ORDER OF TRANSFERRAL—

September 16, 1963

The Court vacates its order heretofore made on September 10, 1963 and case is submitted to the Court for decision. The Court orders matter stand submitted.

[fol. 56]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCER

No. 5522

[Title omitted]

JUDGE'S CERTIFICATE SETTLING RECORD—December 27, 1963

The foregoing transcript consisting of 26 pages in one volume, containing the records in accordance with the Rules on Appeal, in the above-entitled action, having been presented to me within the time allowed by law, is true and correct and is hereby allowed and settled.

Dated: December 27, 1963.

Gregory P. Maushart, Judge of the Superior Court,
In and for the County of Merced, State of California.

[fol. 57] Certificate of Service (omitted in printing).

[fol. 58] [File endorsement omitted]

IN THE DISTRICT COURT OF APPEAL OF CALIFORNIA
FIFTH APPELLATE DISTRICT
5 Crim. No. 103
(5 Misc. No. 44)

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff & Respondent,

vs.

LYMAN E. BUZARD, Defendant & Appellant.

ORDER TRANSFERRING CASE FROM SUPERIOR COURT TO
DISTRICT COURT OF APPEAL—January 7, 1964

By the Court:

The Superior Court of Merced County having certified that a transfer of the appeal in the above entitled action appears necessary to settle important questions of law, and good cause appearing therefor, the appeal from the Justice Court of the Atwater Judicial District, County of Merced, State of California, now pending in the Superior Court of the County of Merced and numbered 5522 therein, is hereby transferred to the Fifth District Court of Appeal.

The appeal is calendared for oral argument before this court on Tuesday, March 3, 1964, at 10 a.m. Briefs shall be filed in accordance with the provisions of Rule 65 of California Rules of Court. The defendant, Lyman E. Buzard, is hereby designated as appellant for the purpose of filing briefs.

Dated January 7, 1964.

Conley, P.J.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 59]

IN THE DISTRICT COURT OF APPEAL OF CALIFORNIA
FIFTH APPELLATE DISTRICT
5 Crim. No. 103

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff & Respondent,

vs.

LYMAN E. BUZARD, Defendant & Appellant.

OPINION—Filed April 21, 1964

Appeal from a judgment of the Justice Court of the Atwater Judicial District, Merced County. John H. Mahoney, Judge. Affirmed.

C. Ray Robinson and Jonathan H. Rowell for Defendant and Appellant.

Stanley Mosk, Attorney General, Doris H. Maier, Assistant Attorney General, and Edsel W. Naws, Deputy Attorney General, for Plaintiff and Respondent.

Appellant, an officer in the United States Air Force, has been permanently stationed at Castle Air Force Base, Merced County, California, since June 1957. He was assigned to temporary duty at Squadron Officer's School, Maxwell Air Force Base, Montgomery, Alabama, on September 3, 1959, and returned to Castle Field on December 19, 1959. On October 30, 1959, appellant purchased a used car in Montgomery, which he registered in his name, and upon paying a license fee obtained Alabama license plates which were valid in Alabama until September 30, 1960. He drove the car to Merced, California, and used it as his sole means of transportation, including commuting from his home to Castle Field.

[fol. 60] Appellant is a resident of the State of Washington and has maintained his domicile in that state at all times. However, he neither registered the vehicle there nor in the State of California. On February 26, 1960, he was arrested by a California Highway Patrol Officer and charged with violation of Vehicle Code section 4000, which provides:

"No person shall drive, move, or leave standing any motor vehicle, trailer, semi-trailer, pole or pipe dolly, or auxiliary dolly upon a highway unless it is registered and the appropriate fees have been paid under this code."

Appellant sought a writ of prohibition to prevent the Justice Court of the Atwater Judicial District, Merced County, California, from proceeding with the trial of his case. This court denied the writ. Subsequently appellant was tried and found guilty of violation of Vehicle Code section 4000, and this appeal followed.

It is necessary to keep in mind from the outset that the license fee here involved is not a personal property tax. In *Ingels v. Riley*, 5 Cal.2d 154, the Supreme Court specifically held at page 159, "... we have no hesitancy in declaring that the charge involved is one imposed on the owners of motor vehicles for the privilege of using the highways of the state and is not, in nature, a property tax."

Appellant first contends that he is exempt from the provisions of section 4000, Vehicle Code, by reason of section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C.A. Appendix, §574).

Section 574 is in two parts. Part (1) provides generally that personal property shall not be deemed to be located or present in or to have a situs for taxation in the state, political subdivision or district in which military personnel are serving, provided they have not established domicile therein. However, part (2) treats of motor vehicle licenses, fees, or excises specifically, by providing that:

[fol. 61] "When used in this section, (a) the term 'personal property' shall include tangible and intangible

property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia *of which the person is a resident or in which he is domiciled has been paid.*" (Emphasis added.)

Appellant leans heavily upon the case of *Dameron v. Brodhead*, 345 U.S. 322 [73 S.Ct. 721], in fact it is the only case cited in his opening brief, but it is not applicable since it is concerned with a tax on furniture and comes within part (1) of section 574.

If the owner-serviceman has registered his motor vehicle in his state of domicile or paid the license fee in that state, it is clear that he cannot be made to register it also in the state in which he is permanently stationed. In *Woodroffe v. Village of Park Forest*, 107 F.Supp. 906, domiciliary taxes or license fees had been paid by the serviceman, and the court there held that the state in which he was on active duty could not also charge the serviceman a vehicle license tax. On the other hand, in *Whiting v. City of Portsmouth*, 118 S.E.2d 505, the facts were comparable to those before us, in that the serviceman had not registered his vehicle or paid any license tax or other fee in his state of domicile, and the court held that he must therefore pay the vehicle license fee required by the state in which he was permanently stationed.

Appellant tacitly admits the inapplicability of *Dameron* and part (1) of section 574 of the Soldiers' and Sailors' Civil Relief Act by arguing that he has complied with part (2) of section 574. The gist of his argument is that his domicile is in the State of Washington; that the State of Washington requires no vehicle registration or payment of fee unless the vehicle is driven upon the highways of that State; that he has not driven on the highways in Washington; [fol. 62] therefore no license can be required by the State of California.

Appellant overlooks the wording of part (2) of section 574, which exempts a serviceman from paying an automobile license or registration fee in the state of his active duty upon the express condition that "the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled *has been paid*." (Emphasis added.)

Since appellant has not paid the license fee in the State of Washington, he has not complied with part (2), so that the Soldiers' and Sailors' Civil Relief Act does not exempt him from the California registration requirements. We hasten to acknowledge that the foregoing construction is both narrow and literal. Other things being equal, in deference to the spirit of the Soldiers' and Sailors' Civil Relief Act, we would be inclined to use a more liberal approach in our interpretation of part (2) of section 574. However, public safety dictates a strict construction, since if we were to adopt appellant's argument it would mean that a serviceman from the State of Washington stationed in California for a number of years (appellant has been here over six years) could purchase a new car each year and never register a single vehicle in California so long as he did not drive in his home state. A car unlicensed or ineffectively licensed is not only tempting to the car thief, but it becomes a public hazard in the event of an accident. We emphasize the "hit-and-run accident" wherein witnesses almost instinctively look for the license plate on the hit-run car.

The Supreme Court noted, in *Stoddart v. Peirce*, 53 Cal.2d 105, at page 117, that the vehicle registration statutes were adopted "for the purpose of protecting innocent purchasers, and to afford identification of vehicles and of persons responsible in cases of accident and injury." That registration is important in criminal cases involving stolen cars was noted by the court in *People v. Galceran*, 178 Cal. App.2d 312, 316.

These diverse reasons for requiring the registration of vehicles driven upon the highways of California serve to point up that the licensing requirement is an exercise of

the police power of the state, as well as a use tax for the privilege of using the highways.

Appellant also asserts that he is being denied equal protection of the law since Vehicle Code section 6701 exempts certain military personnel, but not him, from the provisions of section 4000. The exemption specified in section 6701, insofar as here pertinent, provides:

"Any member of the Armed Forces, whether a resident or nonresident, shall also be entitled to exemption from registration in respect to a vehicle owned by him upon which there is displayed a valid license plate or plates issued for such vehicle in a state where such owner was regularly assigned and stationed for duty by competent military orders at the time such license plate or plates were issued. Such competent military orders shall not include military orders for leave, for temporary duty, nor for any other assignment of any nature requiring his presence outside the state where such owner was regularly assigned and stationed for duty."

We find nothing discriminatory in the section; to the contrary, the reason for the distinction to which appellant points is quite evident. Title to a vehicle registered to a serviceman in the state of his domicile or in the state in which he is on permanent duty, can be traced readily. This is not true where the serviceman purchases a car while temporarily in another state, and brings it into California. Since he is neither permanently stationed nor domiciled in the state of purchase, it is difficult to trace the car or its ownership in the event of an accident, a theft, or a sale.

Next, appellant contends he is being discriminated against because section 6705 provides that any discharged service person who enters California for the purpose of [fol. 64] establishing or re-establishing residence or accepting gainful employment following his discharge from the Armed Services, may operate his vehicle until the current license expires. Appellant argues that the discrimination

stems from the failure of section 6705 to exempt military personnel still on active duty. Patently, there is a valid distinction between discharged service personnel or returnees entering California, on the one hand, and military personnel on active duty in California but domiciled in another state, on the other. Furthermore, if appellant's argument were correct, all veterans' benefit acts would be unconstitutional, since military personnel on active duty are not entitled to receive the many benefits accorded dischargees.

The differences between classifications mentioned in both sections 6701 and 6705 of the Vehicle Code clearly are based upon valid distinctions. The Supreme Court discussed the question of statutory classification in the light of constitutional requirements in *Bilyeu v. State Employees' Retirement System*, 58 Cal.2d 618, and said, at page 623:

"There is no constitutional requirement of uniform treatment, but only that there be a reasonable basis for each classification. In *Sacramento Mun. Util. Dist. v. Pacific Gas & Elec. Co.*, 20 Cal.2d 684 [128 P.2d 529], we said at page 693: 'Wide discretion is vested in the Legislature in making the classification and every presumption is in favor of the validity of the statute; the decision of the Legislature as to what is a sufficient distinction to warrant the classification will not be overthrown by the courts unless it is palpably arbitrary and beyond rational doubt erroneous. [Citations.] A distinction in legislation is not arbitrary if any set of facts reasonably can be conceived that would sustain it.' (See also *State of California v. Industrial Acc. Com.*, 48 Cal.2d 365, 371 [310 P.2d 71].)"

(Accord: *City of Walnut Creek v. Silveira*, 47 Cal.2d 804, 811.)

Appellant's final contention is that the phrase "temporary duty" is vague and ambiguous, and therefore unenforceable. Appellant points to Webster's Dictionary, which defines "temporary" as "lasting for a time only; ephemeral; [fol. 65] transitory." We find that Bouvier's Law Diction-

ary, third revised edition, defines "temporary" as "that which is to last for a limited time." These definitions, when applied to military duty, seem sufficiently clear to enable a person of ordinary intelligence to understand what temporary duty means. If there could be a doubt, it would be dispelled by looking up the entire term, not the isolated words, in Webster's Third New International Dictionary, unabridged, where the term is defined thus: "temporary duty n: military service away from one's assigned organization usu. for a limited period of time." Certainly the term is clear enough to come within the rationale of *Kershaw v. Dept. Alcoholic Bev. Control*, 155 Cal.App.2d 544, wherein the court said, at page 549:

" " . . . [T]he Constitution does not require impossible standards"; all that is required is that the language "conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices . . ." *United States v. Petrillo*, 332 U.S. 1, 7-8 [67 S.Ct. 1538, 91 L.Ed. 1877, 1883]. . . . " . . . That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense. . . . " "

That courts will, if possible, construe statutes so as to avoid absurd applications and to uphold their validity, is well settled. (*In re Cregler*, 56 Cal.2d 308, 312; *Takahashi v. Fish & Game Com.*, 30 Cal.2d 719, 728.)

The judgment is affirmed.

Stone, J.

We Concur:

Conley, P.J.

Brown (R. M.), J.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 66]

[File endorsement omitted]

IN THE SUPREME COURT OF CALIFORNIA

IN BANK

Crim. 8013

THE PEOPLE, Plaintiff and Respondent,

v.

LYMAN E. BUZARD, Defendant and Appellant.

OPINION—Filed October 8, 1964

Lyman E. Buzard appeals from a judgment following his conviction of a violation of section 4000 of the Vehicle Code, a misdemeanor.¹ His attempt by way of prohibition to foreclose the instant proceedings was unsuccessful. (Buzard v. Justice Court, 198 Cal.App.2d 814.)

Defendant is an officer in the United States Air Force. At all times herein pertinent he was a resident of the State of Washington and was stationed at Castle Air Force Base in Merced County, California. Between September 3 and December 19, 1959, he was temporarily assigned to duty for military training at Maxwell Air Force Base in Alabama. While there he purchased an automobile, which he [fol. 67] registered in that state in his name, and obtained Alabama license plates valid through September 30, 1960.

On defendant's return to Castle Air Force Base he drove his automobile from Alabama and has regularly used it in California since that time. While so using it he was stopped by a highway patrol officer and advised that the vehicle was required to be registered in California. He thereafter attempted to register the automobile but was informed by

¹ Section 4000 of the Vehicle Code provided in part at the time of defendant's arrest: "No person shall drive . . . any motor vehicle . . . upon a highway unless it is registered and the appropriate fees have been paid under this code."

an official of the Department of Motor Vehicles that he could not do so without first making a payment in excess of \$100 in fees and penalties. He refused to make the demanded payment and his arrest under section 4000 followed on April 11, 1960.

Defendant's refusal to make payment of the fees and penalties and his defense against the instant charges are based on the contention that section 4000, insofar as it required the payment of fees and penalties, did not apply to him because of the Soldiers' and Sailors' Civil Relief Act of 1940. (50 U.S.C.A. App., §574.) That act provides in section 574, subdivision (1) that "the personal property" of a serviceman "for purposes of taxation" shall not be deemed to have a situs in any state of which he is not a resident. In subdivision (2) automobiles are included as "personal property" within the meaning of the statute and [fol. 68] the term "taxation" is applied to automobile licenses, fees and excises "*Provided*, That the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid."²

The applicable statute of defendant's domiciliary state provides: "it shall be unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display number plates. . . ." (Rev. Code of Wash., § 46.16.010.) Prior to his arrest defendant did not drive his automobile into or otherwise enter the State of Washington after the purchase of the vehicle, nor did he register the automobile there.³

Defendant does not contend that California may not, as an exercise of its police power, require him to register his automobile. In fact, his attempt to register the vehicle

² Section 574 was amended in 1962 by Public Law 87-771 in a manner not here pertinent.

³ Following the arrest, however, defendant registered the automobile in accordance with the Washington statute when he first drove the automobile into that state.

independently of the payment of fees and penalties was frustrated by the department. Defendant's position is simply that the Soldiers' and Sailors' Civil Relief Act of 1940 (hereinafter the Relief Act) prohibits the collection of such [fol. 69] fees as an incident to a proper exercise of the police power or otherwise. As a consequence of the narrow question thus raised by the defendant, contentions which look to the purpose of registration in furtherance of proper law enforcement and administration fail to address themselves to the issue.

Defendant urges that he was not required to obtain a vehicle license and plates by his domiciliary state except as a prerequisite to the operation of his vehicle "over and along a public highway" of that state; that he has not driven his vehicle on such public highways; that, accordingly, no license charges or registration fees became due; that he has satisfied all licensing and registration obligations which that state required of him, and that he has likewise satisfied the proviso of the Relief Act. The argument meets the literal and commonsense meaning of the pertinent statutory provisions.

We are urged by the People to follow the opinion of the Supreme Court of Appeals of Virginia, wherein a city of that state was held to be entitled under the Relief Act to collect an additional vehicular licensing fee from a serviceman who had voluntarily registered and licensed his automobile in that state although claiming Colorado as his domicile. (*Whiting v. City of Portsmouth*, 118 S.E.2d 505.) But it does not appear from the opinion in that case [fol. 70] whether the serviceman was *required* and had failed to pay fees in Colorado. Thus the issue herein raised was not considered or resolved by the Virginia court.

We cannot, as is urged, conclude that subdivision (2) is intended to work to the serviceman's advantage only where a charge has been made by and paid to his domiciliary state. The statute is not couched in terms which flatly require the serviceman to have paid a fee, but rather in terms which accord to him the benefit when charges "required by the State" have been paid. These are the only charges

which he must pay and when there are no charges made there must likewise be no *requirement* that he pay them. Any other conclusion would lead us to the very results which the Relief Act, by its purpose, seeks to avoid. If, for instance, California may exact the instant charges from defendant, then so may any other state into which he brings his vehicle until such time as he enters his domiciliary state and pays the fees there required for the first time. Such a narrow construction would frustrate the obvious beneficent purpose of the act and fail to heed the direction of the Supreme Court that "The Act must be read with an eye friendly to those who dropped their affairs to answer their country's call." (*Le Maistre v. Leffers*, 333 U.S. 1, 6; see also *Plesha v. United States*, 227 F.2d 624.)

[fol. 71] It is further complained that the foregoing construction of the Relief Act permits a serviceman to escape the payment of fee altogether. The complaint is fairly answered by the Supreme Court in *Dameron v. Brodhead*, 345 U.S. 322, where the court was confronted by an attempt of the City of Denver to assess a personal property tax on a serviceman's furniture. The city argued that the Relief Act did not apply because the state of domicile did not impose any personal property taxes on the furniture. The court rejected this contention, saying at page 326: "The short answer to the argument that it [the Relief Act] therefore only applies where multiple taxation is a real possibility is that the plain words of the statute do not say so. . . . There is no suggestion that the state of original residence must have imposed a property tax. . . . In fact, though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders."

Although the court in *Dameron* had before it a question involving the taxation of personal property, never the less the Relief Act expressly includes within the purview of sec-

[fol. 72] tion 574 the licensing of automobiles as taxation of personal property. It is true that automobiles are dealt with separately in subdivision (2) but the different treatment is only in respect to the manner in which vehicles may qualify to be treated as other personal property, and where it appears that the serviceman has paid such charges as may have been assessed by his domiciliary state the language of the statute leaves no room for different treatment insofar as tax or other charges are concerned. As the *Dameron* case cannot be distinguished in any material respect it follows that if the domiciliary state chooses not to exact a vehicular registration or licensing charge from its residents the prohibition against other states from doing so would appear to be well within the intent and purpose of the Relief Act.

It is thus manifest that defendant was not subject to those provisions of section 4000 of the Vehicle Code requiring the payment of fees and penalties, and that his conviction thereunder is improper. In view of the foregoing it is not necessary that we determine the merit, if any, in defendant's further contention that the failure to exempt [fol. 73] him from registration under other statutory provisions is a denial of the equal protection of the laws. (Veh. Code, § 6701.)

The judgment is reversed.

Peek, J.

We Concur:

Traynor, C.J.

McComb, J.

Peters, J.

Tobriner, J.

*Schauer, J.

*Dooling, J.

* Retired Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.

[fol. 74] [File endorsement omitted]

Order Due
November 6, 1964

IN THE SUPREME COURT OF CALIFORNIA

IN BANK

Crim. No. 8013

[Title omitted]

Mosk, J., did not participate.

ORDER DENYING REHEARING—Filed November 4, 1964

Respondent's petition for rehearing Denied.

Traynor, Chief Justice.

[fol. 75] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 76]

SUPREME COURT OF THE UNITED STATES

No. 803, October Term, 1964

CALIFORNIA, Petitioner,

v.

LYMAN E. BUZARD.

ORDER ALLOWING CERTIORARI—March 8, 1965

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted. The case is placed on the summary calendar and set for oral argument immediately following No. 632.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.